What are the Limits of the Corps Jurisdiction?

The Corps regulations broadly define two important terms, ***"waters of the United States"*** for the purpose of Section 404 of the Clean Water Act; and ***"navigable waters of the United States"*** for Section 10 of the Rivers and Harbors Act.

Waters of the United States

The definition of "waters of the United States" includes the following:

a. Navigable waters of the United States.
b. Wetlands.
c. Tributaries to navigable waters of the United States, including adjacent wetlands and lakes and ponds.
d. Interstate waters and their tributaries, including adjacent wetlands.
e. All other waters of the United States not identified above, such as isolated wetlands, intermittent streams, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, where the use, degradation or destruction of these waters could affect interstate or foreign commerce.

Section 404 of the Clean Water Act defines the landward limit of jurisdiction as the high tide line in tidal waters and the ordinary high water mark as the limit in non-tidal waters. When adjacent wetlands are present, the limit of jurisdiction extends to the limit of the wetland.

Navigable Waters of the United States

This term includes the oceans and navigable coastal and inland waters, lakes, rivers, and streams. Corps jurisdiction extends shoreward to the mean high water line.

The Corps general definition of navigable waters of the United States is "those waters subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity."

Within the New England District, the Corps has determined the following to be navigable waters of the United States:

Maine: All tidal waters and their tributaries to the head of tide; Kennebec River to Moosehead Lake; Penobscot River to the confluence of the East and West Branch at Medway; Lake Umbagog within the State of Maine.

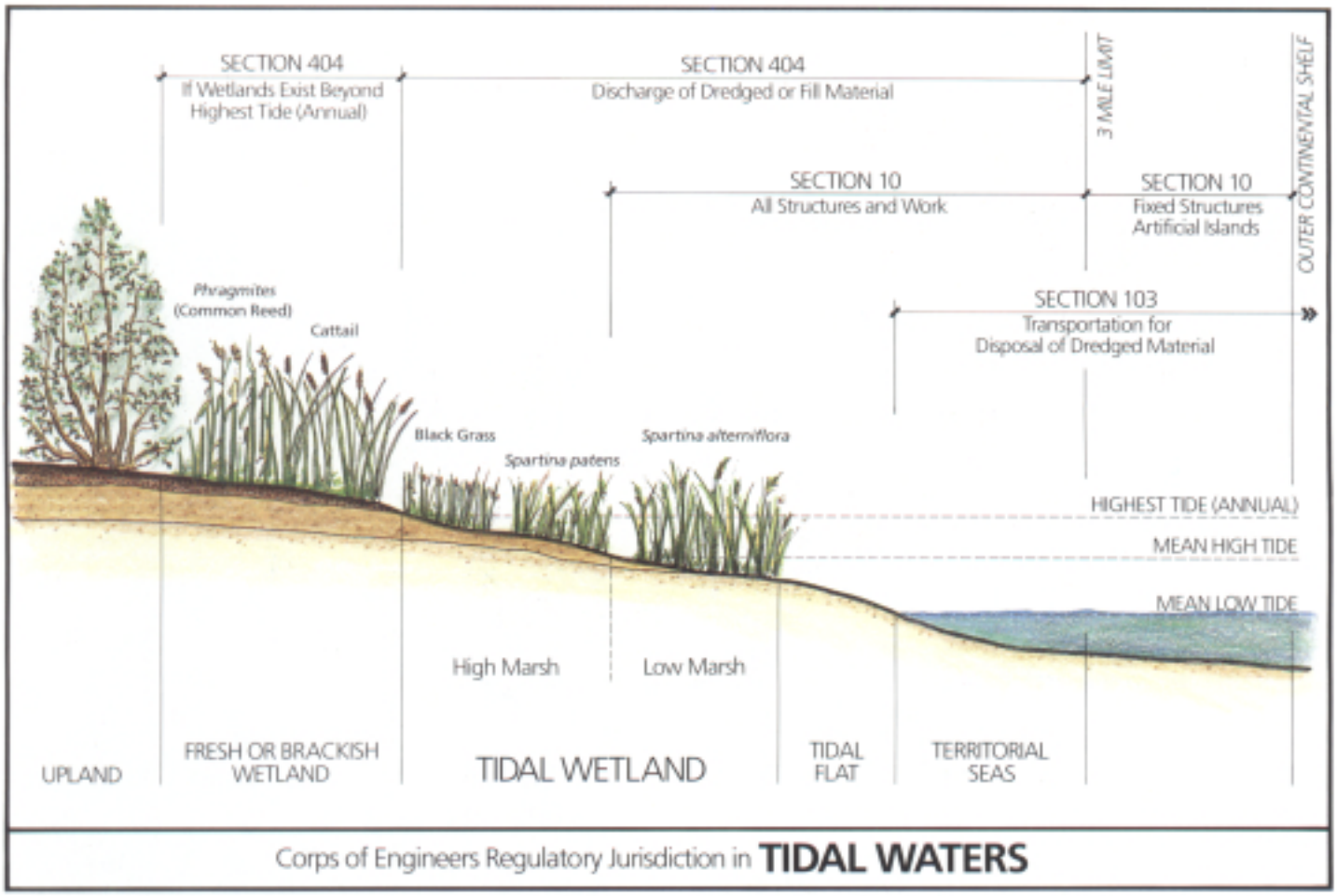
New Hampshire: All tidal waters and their tributaries to the head of tide; Merrimack River from the Massachusetts-New Hampshire State line to Concord; Lake Umbagog within the State of New Hampshire; Connecticut River to Pittsburg.

Vermont: Lake Champlain; Lake Memphremagog; many rivers.

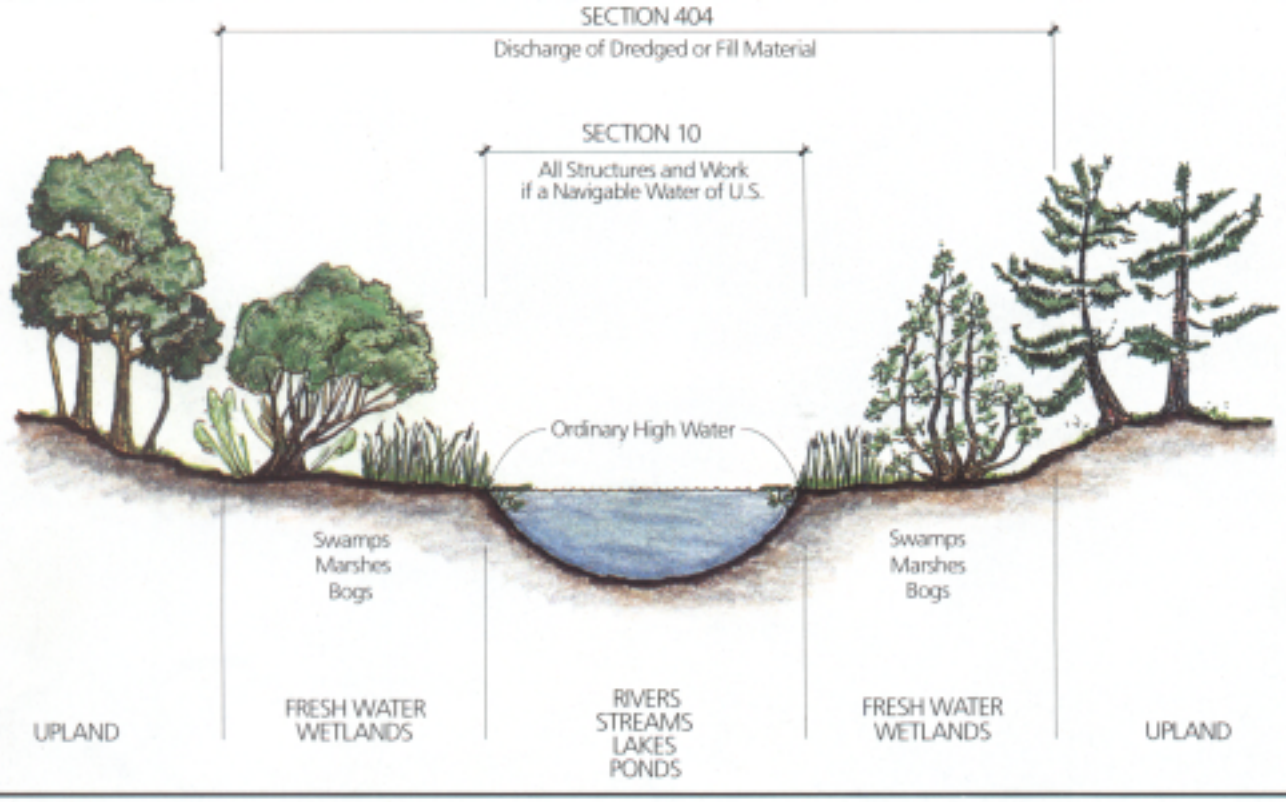
Massachusetts: All tidal waters and their tributaries to the head of tide; Merrimack River to the New Hampshire State line; all of the Connecticut River within the State of Massachusetts.

Connecticut: All tidal waters and their tributaries to the head of tide; Connecticut River to the Massachusetts State line.

Rhode Island: All tidal waters and their tributaries to the head of tide.



Corps of Engineers Regulatory Jurisdiction in **TIDAL WATERS**



Corps of Engineers Regulatory Jurisdiction in **FRESH WATERS**

A Glossary of Terms

dredged material - material that is excavated or dredged from waters of the United States, including wetlands.

discharge of dredged material - any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified discharge site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

discharge of fill material - the addition of fill material into waters of the United States, including wetlands.

fill material - any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a waterbody.

high tide line - a line or mark left upon tide flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined by tidal gages, physical markings or characteristics, vegetation lines, a more or less continuous deposit of fine shell or debris on the foreshore or berm, or other suitable means such as a line of oil or scum along the shore that delineate the general height reached by a rising tide. The term includes spring high tides and other high tides that occur with periodic frequency, but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

mean high water mark - with respect to ocean and coastal waters, the line on the shore established by the average of all high tides. It is established by survey based on available tidal data (preferably averaged over a period of 18.6 years because of the variations in tide). In the absence of such data, less precise methods to determine the mean high water mark are used, such as physical markings, lines of vegetation or comparison of the area in question with an area having similar physical characteristics for which tidal data are readily available.

ordinary high water mark - the line on shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

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